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Competition Commission of India

Enforcement

CCI dismisses complaint against IATA for alleged anti-competitive practices

On December 21, 2012, the Competition Commission of India (CCI) received a complaint from Air Cargo Agents Association of India (**Complainant**) against International Air Transport Association¹ (**IATA**) for alleged anti-competitive practices

The Complainant alleged that IATA has *inter alia*: (i) fixed the commission to be paid to the cargo agents; (ii) prescribed various unfair registration and accreditation requirements for air cargo agents to deal with airlines; (iii) introduced arbitrary system of Cargo Accounts Settlement System (**CASS**) whereby the cargo agents are required to make full payment on stipulated due dates for freight and other dues to all airlines through IATA-CASS office; and (iv) prescribed unilateral and discriminatory conditions on cargo agents.

In March 2013, the CCI referred the matter to the Director General (**DG**) for investigation. The DG concluded that the CCI has no jurisdiction in the matter as IATA fixed commission to be paid to the cargo agents in 2006 whereas the relevant provisions of the Competition Act, 2002 (**Competition Act**) were notified only in May 2009. The CCI agreed with the findings of the DG and closed the matter on June 04, 2015 (hereinafter referred to as the '**CCI Order**'). In appeal, the erstwhile Competition Appellate Tribunal set aside the CCI Order and directed the DG to conduct fresh investigation.

On re-examination, the DG concluded that IATA is not an 'enterprise' under the Competition Act as it is not engaged in economic activity. The CCI disagreed with the DG's findings and noted that some of the services provided by IATA were rendered on payment of fees basis and were economic activities, which makes IATA an 'enterprise' under the Competition Act.

While examining IATA's conduct, the CCI defined the relevant market as the '*market for account settlement services in respect of air cargo segment in India*' and noted that IATA is not in a dominant position in the said market as its market share was nil during the relevant period and did not exceed 21.18 per cent beyond the relevant period. Further, CASS was not mandatory but an option for cargo agents, thus, there existed substitutability in the relevant market as the air cargo agents had the option to switch to alternative account settlement systems.

Given that the Opposite Parties were not dominant in the Relevant Market, the CCI noted that the question of abuse will not arise. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated March 31, 2021)

CCI dismisses complaint against Greater Noida and New Okhla Industrial Development Authorities for alleged abuse of dominant position

The CCI received complaints against Greater Noida Industrial Development Authority (**GNIDA**)² and New Okhla Industrial Development Authority (**NOIDA**) for alleged abuse of dominant position. GNIDA and NOIDA are collectively referred to as the '**Opposite Parties**'.

¹ IATA is the trade association for the world's airlines, representing some 260 members.

² It is the sole/ nodal authority responsible for development of Greater Noida region which is stated to encompass 293 villages.

The complainants alleged that the Opposite Parties abused their dominant position by *inter alia* imposing unfair and one-sided conditions in the lease deeds with developers and did not disclose the encumbered land riddled with disputes while allotment.

GNIDA challenged the maintainability of the case on the ground that the CCI does not have jurisdiction as: (i) it is not an ‘enterprise’ under the Competition Act; (ii) the lease deeds are private contracts and as such the nature of disputes is contractual which ought to have been filed before appropriate forum and not before the CCI. The CCI rejected the jurisdictional plea and noted that the present case relates to allotment of land by GNIDA to developers for development of group housing societies and such activities are economic in nature which makes GNIDA an enterprise under the Competition Act. On the other issue, the CCI noted that a dominant undertaking would impose unfair or discriminatory conditions/ price upon the parties who are contracting with it. If GNIDA’s plea were to be accepted, the dominant undertakings would virtually acquire an immunity from anti-trust actions which is neither the intent nor purport of the legislature.

The CCI defined the relevant market as the ‘*markets for allotment of land for development of group housing projects in Greater Noida and Noida*’ and noted that the Opposite Parties are in a dominant position since they frame the terms and conditions of the scheme, and all the developers are bound to abide by the same. They not only decide on the viability of land and acquire it, but also develop schemes for the development of the said land by private players.

On abuse of dominant position, the CCI *inter alia* noted that in relation to non-disclosure of encumbered land, the status of the land is transparently made available to the developers in a non-discriminatory basis. Therefore, the developers cannot be absolved of their own lack of due diligence. Separately, the lease deeds date back to 2010 and 2014 and the complainants have not offered any justifiable reasons for approaching the CCI at a belated stage. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated May 4, 2021)

CCI orders investigation against Tata Motors for alleged anti-competitive practices

The CCI received complaints against Tata Motors Limited (Tata Motors)³ and its group companies alleging that Tata Motors abused its dominant position and engaged in anti-competitive practices by: (i) coercing dealers to order vehicles as per its whims; (ii) restricting dealers from engaging in any new business activity; (iii) not providing comfort letters to dealers for raising loans from financial institutions apart from Tata Capital Financial and Tata Motors Finance; and (iv) enforcing territorial restrictions on dealers in the dealership agreements.

The CCI defined the relevant market as the ‘*market for manufacture and sale of commercial vehicles in India*’ and noted that Tata Motors, *prima facie*, is in a dominant position with a market share of 43 per cent.⁴ On abuse of dominant position, the CCI *inter alia* noted that:

- Tata Motors’ conduct in coercing dealers to bill vehicles as per its own needs and compelling them to copy-paste a pre-decided list of vehicles on the dealers’ letterhead, is unfair and a supplementary obligation on dealers.

³ It is a subsidiary of Tata Sons. It is engaged *inter alia* in the business of designing, developing, and manufacturing commercial vehicles and chassis for the same, spare parts and providing value added services.

⁴ Based on the annual report of Tata Motors (financial year 2019-20).

- Tata Motors’ restriction on dealers from starting, acquiring or indulging in any new business (even if it is unrelated to the automobile industry) is unfair and results in denial of market access to dealers.
- Tata Motors’ conduct in not providing comfort letters to dealers was unfounded as there was no evidence and therefore, the CCI rejected this allegation.

On anti-competitive practices, the CCI *inter alia* noted that Tata Motors’ restriction on dealers in relation to operating only in an identified territory may create barriers for entry and foreclose competition by hindering entry into the market. Accordingly, the CCI directed the DG to investigate the matter.

(Source: CCI Order dated May 5, 2021)

CCI dismisses case against textile manufacturers for alleged bid rigging

The CCI received a complaint against textile manufacturers namely Sankeshwar Synthetics Private Limited (**Sankeshwar**) and KKK Mills (**KKK**) for alleged bid rigging. Sankeshwar and KKK are collectively referred to as the ‘**Opposite Parties**’.

The complainant *inter alia* alleged that it floated a tender for procurement of woollen underpants in which the Opposite Parties quoted identical prices which was revealed from the minutes of the meetings of the technical evaluation committee and thereby, colluded with each other.

The CCI *inter alia* noted that: (i) mere existence of price parallelism or quoting identical prices is not sufficient to hold the Opposite Parties responsible for bid rigging; and (ii) price parallelism must be accompanied by some plus factor to substantiate the presence of collusion, or any agreement between bidders. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated May 20, 2021)

CCI dismisses case against Genus Breeding, Indian’s Pharmacare and Truвет for alleged bid-rigging

The CCI received a complaint against Genus Breeding India Private Limited (**GBIPL**)⁵, Indian’s Pharmacare Private Limited (**IPPL**)⁶ and Truвет Animal Nutrition Company (**TANC**)⁷ for alleged bid rigging in a tender floated by the Uttar Pradesh Livestock Development Board (**Uttar Pradesh Board**) for establishing a facility for producing and supplying sexed semen of indigenous, crossbred cattle and buffalo breeds (**Product**) in Uttar Pradesh (**Impugned Tender**).

The complainant *inter alia* alleged that only it and GBIPL were eligible to bid for the Impugned Tender as IPPL and TANC did not have the requisite technology to make the Product. However, they also participated in the said tender to distort competition and ensure that GBIPL won the Impugned Tender, and thereby indulged in cover bidding.

The CCI noted that: (i) the fact that neither IPPL nor TANC owned the requisite technology and were acting as authorized agents of GBIPL was disclosed to Uttar Pradesh Board; (ii) the committee constituted for technical evaluation of the bid documents carried out the assessment of the Opposite Parties and upon finding all the three bidders to be technically qualified, the contract was awarded to GBIPL; and (iii) there is no

⁵ It is engaged in production of sexed semen of bovines in India.

⁶ It is a distributor for GBIPL in the State of Uttar Pradesh.

⁷ The Managing Partner of TANC was a former employee of GBIPL.

material on record to hold that IPPL and TANC acted on the direction of GBIPL and manipulated the bidding process. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated May 20, 2021)

Merger Control

CCI approves acquisition of minority shareholding of Technip Energies by Bpifrance Participations

The CCI approved the acquisition of additional 11.82 per to 17.25 per cent of the equity share capital of Technip Energies B.V. (**Technip**) by Bpifrance Participations S.A (**Bpifrance**) (referred to as the '**Proposed Transaction**'). Post the Proposed Transaction, Bpifrance's shareholding in Technip would increase to 14.07 to 20 per cent.

In India, Technip manages engineering, procurement and construction projects. Bpifrance is an investment holding company and is not directly engaged in any business activity in India. The CCI noted that there are no horizontal overlaps or vertical or complementary links between the activities of the parties in India and therefore, the Proposed Transaction is not likely to raise competition concerns.

(Source: CCI Order dated February 24, 2021)

CCI approves acquisition of Principal Mutual Fund by Sundaram Finance

The CCI approved the acquisition of 100 per cent of the equity share capital of Principal Asset Management Private Limited (**PAMPL**)⁸, Principal Trustee Company Private Limited (**PTCPL**)⁹ and Principal Retirement Advisors Private Limited (**PRAPL**)¹⁰ by Sundaram Asset Management Company Limited (**SAMC**)¹¹, a wholly owned subsidiary of Sundaram Finance Limited (**SFL**)¹² (referred to as the '**Proposed Transaction**'). PAMPL, PRAPL and PTCPL are collectively referred to as the '**Targets**'.

The CCI noted that there are horizontal overlaps between the activities of the parties in the market for mutual funds in India and in the narrow market for: (i) equity oriented mutual funds schemes; (ii) debt oriented mutual funds schemes; and (iii) hybrid mutual funds schemes, in India. However, given that the: (i) combined market share of the parties in the said markets is insignificant with negligible incremental market share; and (ii) presence of several players, the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there is an existing vertical relationship between the parties in the upstream market for mutual funds in India and downstream market for mutual funds distribution. However, given the: (i) insignificant presence of the parties; and (ii) presence of several players in the downstream market, the same is not likely to raise foreclosure concerns.

⁸ It is engaged in the business of providing asset management services to the Principal Mutual Fund and operating/ managing the schemes of the said mutual fund. It is also engaged in provision of portfolio management and advisory services (**PMS**). However, its PMS business has been inactive, and it is not presently engaged in the said business.

⁹ It is engaged in providing trusteeship services to Principal Mutual Fund.

¹⁰ It is engaged in the business of: (i) providing long term investment and retirement planning and advisory solutions; (ii) providing services pertaining to procurement, solicitation and distribution of insurance products and policies etc.; and (iii) distribution of mutual funds.

¹¹ It is the investment manager for Sundaram Mutual Fund.

¹² The SFL group has presence in segments such as mutual funds, housing finance, general insurance, IT, business process outsourcing.

JSA represented SAMC in the Proposed Transaction before the CCI.

(Source: CCI Order dated April 5, 2021)

CCI approves internal restructuring of Motherson Group under Green Channel Route

The CCI granted deemed approval to the demerger of Motherson Sumi Systems Limited's (MSSL)¹³ domestic wiring harness undertaking into Motherson Sumi Wiring India Limited¹⁴, and subsequent amalgamation of Samvardhana Motherson International Limited¹⁵ by and into MSSL (referred to as the 'Proposed Transaction'). The parties notified the Proposed Transaction under the Green Channel Route (GCR) as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

CCI approves internal restructuring of IBM Corporation under Green Channel Route

The CCI granted deemed approval to the separation of managed infrastructure services business division (**MIS Business**)¹⁶ from International Business Machines Corporation (**IBM**) into a newly incorporated wholly owned subsidiary of IBM i.e., Kyndryl Holdings LLC (**Kyndryl**). Kyndryl will be spun off from IBM and will be listed on New York Stock Exchange or National Association of Securities Dealers Automated Quotations. The shareholders of IBM will be distributed shares of Kyndryl in the same proportions as their shareholdings in IBM Corporation (referred to as the '**Proposed Transaction**'). The Proposed Transaction is being implemented in various jurisdictions including India.

The parties notified the Proposed Transaction under GCR as there were no horizontal, vertical or complementary overlaps between the activities of the parties in India.

JSA represented IBM and Kyndryl in the Proposed Transaction before the CCI.

(Source: Summary)

¹³ It is a specialised full-system solutions provider and caters to a diverse range of customers in the automotive and other industries globally, as mentioned on its website.

¹⁴ It is MSSL's newly incorporated wholly owned subsidiary.

¹⁵ It is the holding company of the Motherson group, engaged in manufacturing automotive components for original equipment manufacturers, as mentioned on its website.

¹⁶ It is the business of the infrastructure services unit of IBM Corporation's Global Technology Services segment.

Miscellaneous

CCI to assess concession agreements in infrastructure and public service delivery sector

The CCI proposes to undertake a study on competition law assessment of model concession agreements in infrastructure and public service delivery segments such as railways, airports and national highways. For this purpose, the CCI has consulted and engaged with Niti Aayog, a public policy think tank of the Government of India. This is an attempt to reduce potential competition concerns in structuring, granting and implementing concession agreements which would help in pre-empting competition intervention later. This is in addition to the studies that the CCI is presently undertaking on common ownership by private equity investors, surge pricing by cab aggregators and pharmaceutical sector.

(Source: Media Report)

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